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UNITED STATES OF AMERICA

10 UNITED STATES DISTRICT COURT

11 FOR THE CENTRAL DISTRICT OF CALIFORNIA

12 UNITED STATES OF AMERICA,

13 Plaintiff,

14 v.

15 MAKSIM ZAITSEV,

16 Defendant.

No. CR 2:25-cr-00154-SPG

GOVERNMENT'S TRIAL MEMORANDUM

Trial Date: May 6, 2025

Trial Time: 8:30 a.m.

Location: Courtroom of the
Hon. Sherilyn P.
Garnett

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19 Plaintiff United States of America, by and through its counsel
20 of record, the United States Attorney for the Central District of
21 California

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1 and Assistant United States Attorneys Rahul R.A. Hari and Neil P.
2 Thakor, hereby files its Trial Memorandum.

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5 Dated: April 30, 2025

Respectfully submitted,

6 BILAL A. ESSAYLI
United States Attorney

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8 LINDSEY GREER DOTSON
Assistant United States Attorney
Chief, Criminal Division

9
10 /s/
11 RAHUL R.A. HARI
NEIL P. THAKOR
Assistant United States Attorney

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13 Attorneys for Plaintiff
UNITED STATES OF AMERICA
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1 TRIAL MEMORANDUM

2 **I. FACTUAL SUMMARY**

3 The government anticipates that the evidence will show that on
4 February 25, 2025, defendant arrived at the 300 N. Federal Building
5 in Downtown, Los Angeles, in response to a United States Customs and
6 Immigration Services ("USCIS") notice of appointment.

7 Defendant and his wife arrived at the Federal Building, waited
8 in the security line, took the elevator to the seventh floor, and
9 checked in at the USCIS office at a glass window. The evidence will
10 show that the office has two uniformed federal officers outside its
11 doors and that federal employees run the customer windows.

12 At approximately 10:00am, defendant was called into an interview
13 room outside of the public waiting area and behind an employee-only
14 door. Two ICE officers, Officer Farris Hisle and Officer Ivan Robles
15 identified themselves as federal officers, informed defendant he was
16 being arrested, and placed him in handcuffs. Defendant was then
17 walked out of the interview room down a private hallway inside the
18 USCIS office space and then out a door back into the public hallway.
19 Upon entering the public hallway and seeing the lobby where he knew
20 his wife to be waiting, defendant began kicking off the wall,
21 dropping his body weight to the ground, and turning back around. At
22 approximately 10:08, in an effort to remain standing and direct
23 defendant towards a private elevator down to ICE facilities, Officer
24 Robles attempted to redirect defendant's face forward and away from
25 himself. Defendant bit down on Officer Robles' finger, lacerating
26 flesh and fracturing bone. Defendant continued biting down on
27 Officer Robles' finger until both officers struck defendant multiple
28 times. Upon unclenching his bite, defendant told officers he was

1 "sorry" for biting. The government expects the evidence will show
2 that at all times defendant was aware that the officers were federal
3 officers or employees, defendant did not believe force was necessary
4 to defend against immediate use of unlawful force, and defendant used
5 more force than reasonably necessary in the circumstances.

6 Officer Robles presented at urgent care for treatment for his
7 finger injury. He was informed of the high-risk of infection and
8 communicable diseases associated with human bites and shown X-rays of
9 his displaced fracture. Officer Robles was placed on three-week
10 medical leave as a result of his finger injury. He received multiple
11 gluteus injections to prevent bone infection, and he has continuing
12 nerve damage as a result of the fracture.

13 **II. STATEMENT OF THE CHARGE**

14 Defendant is charged with one count of assault on a federal
15 officer resulting in bodily injury in violation of 18 U.S.C.
16 § 111(a)(1), (b).

17 The government must prove at trial: (1) defendant forcibly
18 assaulted a federal officer or employee, (2) defendant did so while
19 the federal officer or employee was engaged in, or on account of, his
20 official duties, and (3) defendant inflicted bodily injury. Ninth
21 Cir. Model Jury Instructions 8.2 (2022 ed.).

22 If defendant raises a self-defense argument, the government must
23 additionally prove at trial: (1) defendant knew that the federal
24 officer or employee was a federal officer or employee, (2) defendant
25 did not reasonably believe force was necessary to defend against an
26 immediate use of unlawful force, or (3) defendant used more force
27 than appeared reasonably necessary in the circumstances. Ninth Cir.
28 Model Jury Instructions 8.3 (2022 ed.).

1 **III. GOVERNMENT'S CASE-IN-CHIEF TIME ESTIMATE**

2 In total, the government estimates that its case-in-chief (with
3 a reasonable allotment for cross-examination) will be approximately
4 one day. The government intends to call five witnesses in its case-
5 in chief, including (1) Officer Ivan Robles, (2) Officer Farris
6 Hisle, (3) Special Agent Thomas J. Smith, (4) Danny L. Harrison,
7 M.D., and (5) Steven Shin, M.D.¹

8 **IV. RELEVANT LEGAL AND EVIDENTIARY ISSUES**

9 **A. Pending Motions**

10 The government has filed four motions in limine to preclude
11 evidence and argument. Dkts. 27, 28, 38, 39. Specifically, these
12 motions seek to preclude evidence and argument:

- 13 • Seeking jury nullification (Motion in Limine No. 1);
- 14 • Evidence of defendant's subsequent injuries (Motion in
15 Limine No. 2);
- 16 • Regarding the lawfulness of defendant's immigration arrest
17 (Motion in Limine No. 3);
- 18 • Pursuing a self-defense theory (Motion in Limine No. 4);
19 and
- 20 • Evidence from the personnel files of DOs Robles and Hisle
21 (Motion in Limine No. 5).

22 **B. Admissibility of Defendant's Statements**

23 At trial, the government will offer into evidence some of
24 defendant's prior statements. Specifically, defendant's statement of
25 apology to his arresting officers immediately following his arrest.
26 A defendant's statements, when offered by the government, are
27 _____

28 ¹ The government reserves the right to call additional witnesses
in either its case-in-chief or rebuttal case (if any).

1 admissions by a party-opponent and are therefore not hearsay. Fed.
2 R. Evid. 801(d)(2); see United States v. Ortega, 203 F.3d 675, 682
3 (9th Cir. 2000). The hearsay rule prohibits a defendant from
4 obtaining the benefit of testifying without subjecting herself to
5 cross-examination by placing her self-serving prior statements before
6 the jury through other witnesses. Fed. R. Evid. 801(c); United States
7 v. Fernandez, 839 F.2d 639, 640 (9th Cir. 1988).

8 **C. Expert Opinion Testimony**

9 A qualified expert witness may provide opinion testimony on a
10 fact at issue if specialized knowledge will assist the trier of fact.
11 Fed. R. Evid. 702. The Court has broad discretion to determine
12 whether to admit expert testimony. United States v. Anderson, 813
13 F.2d 1450, 1458 (9th Cir. 1987) (affirming district court decision to
14 admit expert's testimony based on personal participation in over 50
15 drug sales). Expert opinion may be based on hearsay or facts not in
16 evidence, where the facts or data relied upon are of the type
17 reasonably relied upon by experts in the field. Fed. R. Evid. 703.

18 At trial, the government anticipates calling Dr. Steven Shin,
19 expert in orthopedic injuries with a specialty in hand injuries to
20 discuss the scope of Officer Robles' injury, including the risks
21 associated with finger breaks and human bite injuries. Dr. Shin is
22 qualified both by his extensive medical training and his twenty-six
23 years of experience as a preeminent hand surgeon. Dr. Shin has
24 dozens of publications in his name, has testified previously as an
25 expert witness, and currently practices at Cedars Sinai. Dr. Shin
26 also maintains a private practice, having performed surgeries on
27 notable patients, including NFL football player Drew Brees and NBA
28 basketball player Stephen Curry.

1 After Dr. Shin describes his qualifications, principles, and
2 methodologies, the government will request that the Court make an
3 express reliability finding on the record, which can be done at
4 sidebar or on a break before Dr. Shin offers his expert opinions.
5 The government makes this request pursuant to the decision in United
6 States v. Holguin, 51 F.4th 841 (9th Cir. 2022), in which the Ninth
7 Circuit held that "district courts must make explicit findings that
8 the government's expert testimony was reliable." Id. at 851. As the
9 Court explained, "[a] district court abdicates its gatekeeping role,
10 and necessarily abuses its discretion, when it makes no reliability
11 findings. Reliability findings must be made explicit on the record -
12 - an implicit finding does not suffice. This requirement ensures
13 that district courts engage in the reliability inquiry and create a
14 record of that inquiry to facilitate appellate review." Id. at 851
15 (cleaned up).

16 **D. Lay Opinion Testimony**

17 Federal Rule of Evidence 701 "permits a lay witness to give
18 opinion testimony as long as the opinion is (a) rationally based on
19 the perception of the witness and (b) helpful to a clear
20 understanding of the witness's testimony or the determination of a
21 fact in issue." United States v. Pino-Noriega, 189 F.3d 1089, 1097
22 (9th Cir. 1999) (cleaned up).

23 Lay opinion testimony by law enforcement officers is admissible.
24 See United States v. VonWillie, 59 F.3d 922, 929 (9th Cir. 1995);
25 United States v. Barragan, 871 F.3d 689, 703-04 (9th Cir. 2017). As
26 the Ninth Circuit has explained, law enforcement officers' opinion
27 testimony "is a means of conveying to the [jury] what the witness has
28 seen or heard," and such "witnesses may relate their opinions or

1 conclusions of what they observed." United States v. Skeet, 665 F.2d
2 983, 985 (9th Cir. 1982). Moreover, "an investigator who has
3 accumulated months or even years of experience with the events,
4 places, and individuals involved in an investigation necessarily
5 draws on that knowledge when testifying; indeed, it is those out-of-
6 court experiences that make the witness's testimony helpful to the
7 jury." United States v. Gadson, 763 F.3d 1189, 1209 (9th Cir. 2014).
8 Rule 16 notice is not required for lay opinion testimony. United
9 States v. Moreno, 243 F.3d 551, 551 (9th Cir. 2000) ("Rule 16 notice
10 was not required, however, because this testimony was properly
11 admitted as the opinion of a lay witness.").

12 Here, the government may elicit lay opinion testimony from the
13 investigating law enforcement officers in this case, which includes
14 testimony regarding defendant's motive to tip-off his wife that she
15 might be the subject of arrest.

16 **E. Photographs**

17 The government intends to introduce photographs of Officer
18 Robles' injury and photographs from the Federal Building where the
19 alleged assault occurred. Admitting a photograph into evidence
20 requires that the proponent meet only a very low hurdle. "Under the
21 Federal Rules, the witness identifying the item in a photograph need
22 only establish that the photograph is an accurate portrayal of the
23 item in question." People of Territory of Guam v. Ojeda, 758 F.2d
24 403, 408 (9th Cir. 1985) (interpreting Fed. R. Evid. 901(b)(1)). The
25 Ninth Circuit has held that "[p]hotographs are admissible as
26 substantive as well as illustrative evidence." United States v. May,
27 622 F.2d 1000, 1007 (9th Cir. 1980).

1 Photographs should be admitted so long as they fairly and
2 accurately represent the event or object in question. See United
3 States v. Oaxaca, 569 F.2d 518, 525 (9th Cir. 1978). Notably, "the
4 witness who lays the authentication foundation need not be the
5 photographer, nor need the witness know anything of the time,
6 conditions, or mechanisms of the taking of the picture." 32
7 McCormick on Evid. § 215 (7th ed.).

8 **F. Demonstrative/Replica Exhibits**

9 To assist the jury in understanding the layout of the USCIS
10 office, the government intends to offer into evidence and/or publish
11 to the jury an overhead blueprint map of the USCIS office.

12 **G. Reciprocal Discovery**

13 Rule 16 of the Federal Rules of Criminal Procedure creates
14 certain reciprocal discovery obligations on the part of defendants to
15 produce three categories of materials that they intend to introduce
16 as evidence at trial: (1) documents and tangible objects; (2) reports
17 of any examinations or tests; and (3) expert witness disclosure.
18 Rule 16 imposes on defendants a continuing duty to disclose these
19 categories of materials. Fed. R. Crim. P. 16(b)(1)(A), (b)(1)(C),
20 and (c). In those circumstances where a party fails to produce
21 discovery as required by Rule 16, the rule empowers the district
22 court to "prohibit that party from introducing the undisclosed
23 evidence," or it may "enter any other order that is just under the
24 circumstances." Fed. R. Crim. P. 16(d)(2)(C) and (D). To the extent
25 defendant may attempt to introduce or use any evidence at trial that
26 he has not produced to the government, such documents should be
27 excluded. See Taylor v. Illinois, 484 U.S. 400, 415 (1988)
28 (defendant's failure to comply with, or object to, government's

1 discovery request before trial justified exclusion of unproduced
2 evidence).

3 **V. CONCLUSION**

4 The government respectfully requests leave to supplement this
5 Trial Memorandum, as appropriate.